section by section-H.R. 1201

Digital Media Consumers' Rights Act Section-by-Section Description

Section 1 sets forth the title of the bill, the Digital Media Consumers' Rights Act of 2002 (the "DMCRA").

Section 2 sets forth findings with respect to the emerging problem created for consumers, retailers, and device manufacturers as a result of the introduction of non-standard "copy protected compact discs." As has become apparent, even the limited introduction of these discs into the market has caused consumer confusion and increased burdens on retailers and manufacturers. For that reason, the Federal Trade Commission should be empowered to ensure adequate labeling occurs for the benefit of consumers. Consumers should be aware of any reduced playability or recording functionality of non-standard "copy protected compact discs" before they make the decision to purchase such items.

Record companies introducing new forms of copy protection should have the freedom to innovate, but they also must bear the burden of providing adequate notice to consumers about restrictions on the playability and recordability of "copy-protected compact discs." In this connection, it is important to stress as well that consumer electronics manufacturers and personal computer manufacturers may make product adjustments to ensure that devices continue to work in the manner in which consumers expect them to work.

Section 3 establishes the new labeling and enforcement requirements with respect to these new, non-standard "copy protected compact discs." Section 3 establishes a new Section 24A to the Federal Trade Commission Act (15 USC 41 et seq.)

Subsection (a) defines, among other terms, "audio compact disc" and "prerecorded digital music disc product," the latter of which must meet the new labeling requirements. The bill specifically exempts DVD-Audio discs and Super Audio CDs from the labeling requirements because the marketing and packaging of these formats already notify consumers that they are not traditional audio compact discs. (New labeling requirements may be required by rule with respect to these and other new formats, but only if the Commission makes the necessary findings established in subsection (d)(2).)

Subsection (b) prohibits the introduction into commerce, sale, offering for sale, or advertising for sale of a prerecorded digital music disc product which is mislabeled or falsely or deceptively advertised or invoiced. This section also prohibits the removal or mutilation of a label required under the law by anyone other than the ultimate consumer. A violation of this section is deemed to be an unfair method of competition and an unfair and deceptive act or practice within the meaning of the Federal Trade Commission Act.

Subsection (c) establishes new labeling requirements for these non-standard compact discs. Among other things, a label prominently affixed to the front of the packaging must notify a consumer that the disc might not play properly in ordinary consumer electronics products and might not be recordable to the hard drive of a personal computer. The package in which the prerecorded digital music product is sold also must notify consumers about any minimum recommended software requirements for playback on a personal computer, any restrictions on downloading songs, and the applicable return policy.

Subsection (d) authorizes the Commission to engage in two rulemakings. Under the first, the Commission is empowered to develop such rules and regulations as it deems appropriate to prevent the prohibited acts set forth in the statute and to require the proper labeling of prerecorded digital music disc products. In addition, with respect to new audio formats, using new playback formats, the Commission is authorized to conduct a subsequent rulemaking and to impose labeling requirements should it find all three of the following: (1) the existence of substantial consumer confusion about the playability and recordability of these discs; (2) the discs are not properly labeled with respect to their playability on standard audio compact disc players; and (3) the discs either are not recordable on a personal computer or are bound, when recorded, to a particular device.

Section 4 requires the Commission to provide a report to Congress two years after the date of enactment. Among other things, the Commission is to report on the extent to which consumers have continued to have problems with non-standard compact discs, the burden that retailers and manufacturers have borne as a result of the need to handle consumer complaints, and any changes to the law that the Commission believes would better promote the interest of consumers. In addition, the Commission is required to report on the extent to which the introduction of new compact disc formats has led to consumer confusion or to complaints from consumers to the Commission.

Section 5 makes the necessary changes to the DMCA to restore the historic balance in U.S. copyright law.

Subsection (a) would amend sections 1201(a)(2) and (b)(1) to permit otherwise prohibited conduct when engaged in by a person "solely in furtherance of scientific research into technological protection measures." This change is intended to address a real concern identified by the scientific community. It does not authorize hackers and others to post trade secrets on the Internet under the guise of scientific research, or to cloak otherwise unlawful conduct as scientific research. This amendment codifies an interpretation of Section 1201(a)(2) advanced by the U.S. Department of Justice in Felten v. The Recording Industry Association of America.

Subsection (b) would amend the "savings clause" of section 1201(c)(1) to make clear that it is not a violation of section 1201 to circumvent a technological measure in connection with gaining access to or using a work if the circumvention does not result in an infringement of the copyright in the work. For example, a user may circumvent an access control on an electronic book he purchased for the purpose of reading it on his computer. However, if he were to upload the book onto the Internet for distribution to others, he would be liable for both a section 1201 circumvention violation and a copyright infringement.

Subsection (b) also would modify section 1201(c) by adding a new paragraph (5) to provide that it is not a violation of section 1201 to manufacture, distribute, or make non-infringing use of a hardware or software product capable of enabling significant non-infringing use of a copyrighted work. The section restores the standard set by the U.S. Supreme Court in the 1984 decision of Sony v. Universal City Studios, 464 U.S. 417 (1984) (commonly known as the "Betamax" case). The provision is intended to ensure that consumers will have access to hardware and software products by which to engage in the activities authorized by the legislation. For example, a person could develop software that would enable him to listen in audio form to the text of an electronic book he has purchased.